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RUMIAAA/CDR USSOUTHCOM MIAMI FL
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHDC
RUEHRC/DEPT OF AGRICULTURE WASHINGTON DC
RUEAUSA/DEPT OF HHS WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC

UNCLAS SECTION 01 OF 02 MANAGUA 000877

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STATE PASS USTR AND USAID
USDOC FOR 4332/ITA/MAC/WH/MSIEGELMAN

E.O. 12958: N/A
TAGS: [EINV](#) [ETRD](#) [ECON](#) [CASC](#) [NU](#)
SUBJECT: NICARAGUAN GOVERNMENT EXPROPRIATES AMCIT PROPERTY

Summary

¶1. (SBU) Three U.S. citizens claim to own 41.66% of the property where an open-air landfill known as "La Chureca" is located along the shore of Lake Managua. In July 2009, the Office of the Attorney General published a resolution in the Official Gazette expropriating the land on which the landfill is located and transferring title to the City of Managua. The government offered bonds with a face value of about \$2 million, worth half that on the secondary market -- far below the \$5 million in cash compensation agreed upon in 2008. The Nicaraguan Government has expropriated the land to allow it to go forward with a project under which the Spanish Government will redevelop the area -- its flagship assistance effort in Nicaragua. Making reference to the Nicaraguan Constitution and the U.S. - Central America - Dominican Republic Free Trade Agreement (CAFTA-DR), the U.S. citizens who claim ownership assert that the government's compensation should be paid in cash and should reflect market value. Post would appreciate guidance on the possible application of CAFTA-DR in this case.

U.S. Citizens Claim Ownership of Landfill and Farm

¶2. (U) La Chureca, Managua's open-air landfill, occupies about 100 acres along the shore of Lake Managua. An estimated 120 families who work at

¶3. (U) Nicaraguan Ernesto Martinez bought the property on which La Chureca is located, known as Santa Isabel Farm, in 1932. The property measured 551 acres at that time. Ernesto Martinez died in 1963 and left the property in four equal shares to his wife Carlota and three children, Indiana Martinez de Zeledon, Carlos Martinez, and Ernesto Martinez Guerrero. In September 1963, Carlota Martinez sold her stake to her son Carlos.

¶4. (SBU) U.S. citizen Indiana Martinez de Zeledon has provided the Property Office with documentation to support her claim that she owns one-quarter of Santa Isabel Farm. At least two other U.S. citizens, Maria Isabel Martinez Castrillo and Gustavo Adolfo Martinez Castrillo, each claim to own 8.33% of the property as heirs to Carlos Martinez. Property Office staff continue to review documents, but all told, U.S. citizens claim to own 41.66% of La Chureca and Santa Isabel Farm.

Government Expropriates U.S. Citizen Property

¶5. (U) Maria Isabel and Gustavo Adolfo Martinez claim that the Martinez family entered into a verbal agreement with Managua officials after the 1972 earthquake to allow the city to dump debris at the Santa Isabel Farm. Later in the decade, their father Carlos Martinez signed a written lease with the City of Managua on behalf of the family.

¶6. (U) In the 1990s, the Martinez family began negotiations to transfer the land to the City of Managua. Over the years, the Martinez family has sold off parcels, and Santa Isabel Farm now measures only 255 acres, with 100 acres occupied by the landfill and balance planted with fruit trees and serving as pasture for about 350 head of cattle. In 1997, Managua City Council published a resolution in the Official Gazette to declare the entire property "public utility." However, city officials shelved the issue and took no further action until 2008, when the City Council -- under the leadership of former FSLN Mayor Dionisio Marenco -- ratified the 1997 resolution and agreed to pay 100 million cordobas (approximately \$5 million) in cash compensation, payable in six installments over two years. To date, the city has paid no compensation.

¶7. (U) In July 2009, the Office of the Attorney General published a resolution in the Official Gazette asserting government ownership of La Chureca on the basis of the 1997 "public utility" declaration. The Attorney General's resolution also transferred title for all 255 acres to the City of Managua. Publication of the resolution also served as notification to the Martinez heirs that they would receive property indemnification bonds (BPIs), usually issued as compensation for property expropriated during the 1980s, with a face value of 39.6 million cordobas (about \$2 million). [Note: The Martinez heirs could sell these BPIs on the secondary market for about half of face value. Total compensation would amount to about \$1 million in cash. End note.]

Embassy Advocacy and Legal Questions

¶8. (SBU) U.S. citizens Indiana Martinez, Maria Isabel Martinez Castrillo, and Gustavo Adolfo Martinez Castrillo have sought the assistance of the U.S. Embassy Property Office in ensuring prompt and fair compensation for their property. They have asserted that the Nicaraguan Constitution requires that in the case of expropriation, compensation be based on fair market value and paid in cash. The U.S. citizen Martinez heirs also expressed concern that the actions of the Nicaraguan Government run counter to the provisions of CAFTA-DR, which also requires that compensation paid in case of expropriation be based on fair market value and be paid

in cash.

9. (SBU) On August 21, the Ambassador wrote Attorney General Hernan Estrada to inform him that Santa Isabel Farm is partially owned by U.S. ci

Comment

10. (SBU) This case illustrates three hallmarks of the government's approach to dealings with the private sector. First, the Ortega administration does not view itself as bound in any way to commitments made by previous administrations or, in this case, by political opponents, as was Marenco, despite being a member of the FMLN. Second, the Ortega administration seldom negotiates with the private sector in a substantive way. Estrada has made a "take it or leave it" offer to the Martinez heirs, just as he has with many U.S. citizens seeking compensation for property expropriated in the 1980s. Finally, the government is always careful to shroud its actions in a veil of legality.

Action Request

11. (U) Post would appreciate guidance on the possible application of CAFTA-DR in these circumstances. The Property Office is available to forward documentation on the case and answer questions.

CALLAHAN